

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

REMBRANDT WIRELESS
TECHNOLOGIES, LP,

Plaintiff,

V.

SAMSUNG ELECTRONICS CO. LTD.;
SAMSUNG ELECTRONICS AMERICA,
INC.; SAMSUNG TELECOMMUNICATIONS
AMERICA, LLC; SAMSUNG AUSTIN
SEMICONDUCTOR, LLC; BLACKBERRY,
CORP. and BLACKBERRY, LTD,

Defendants.

Case No. 2:13-CV-213

Jury Trial Requested

**JOINT MOTION FOR LEAVE TO EXTEND THE DEADLINES FOR DISCLOSURE OF
EXPERT WITNESSES AND REBUTTAL EXPERT WITNESSES, TO COMPLETE
EXPERT DISCOVERY, AND TO FILE DISPOSITIVE AND *DAUBERT* MOTIONS**

Plaintiff Rembrandt Wireless Technologies, LP (“Rembrandt”) together with Samsung Co., Ltd., Samsung Electronics America, Inc., Samsung Telecommunications America, LLC, Samsung Austin Semiconductor, LLC (“Samsung”), BlackBerry Corp., and BlackBerry Ltd. (“BlackBerry”) jointly come before the Court and ask that the Docket Control Order (Docket No. 53, as amended by Docket No. 140) be amended as listed below. The requested changes will not affect any other deadlines in the Docket Control Order (“DCO”).

The parties note that the date for jury selection is proposed to be amended only to correct a suspected error in a previous amendment to the DCO. In particular, on August 29, 2013, the Court's initial DCO (Docket No. 53) set February 2, 2015 as the date for jury selection. On March 12, 2014, the Court reset jury selection for February 9, 2015. On September 22, 2014, the parties

moved to amend the DCO to adjust certain fact discovery deadlines, but inadvertently submitted a proposed amended DCO with the original February 2, 2015 date for jury selection. (Docket No. 139.) This DCO was subsequently entered by the Court. (Docket No. 140.) The parties believe that the Court did not intend to move the jury selection date and so propose below to amend the date back to February 9, 2015.

Amended Deadline	Current Deadline	Event
Oct. 6, 2014	Sept. 29, 2014	Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof.
Nov. 3, 2014	Oct. 20, 2014	Serve Disclosures for Rebuttal Expert Witnesses.
Nov. 21, 2014	Nov. 3, 2014	Deadline to Complete Expert Discovery
Nov. 26, 2014	Nov. 10, 2014	*File Dispositive Motions or Motion to Strike Expert Testimony (including Daubert Motions) No dispositive motion or motion to strike expert testimony (including Daubert motion) may be filed after this date without leave of Court.
Feb. 9, 2015	Feb. 2, 2015	*Jury Selection – 9:00 a.m. in Marshall, Texas

Good cause exists for amending these scheduling deadlines. First, a death in the family of Plaintiff's damages 30(b)(6) witness required postponing his deposition until October 21, 2014. If the date for rebuttal expert reports is not extended, Defendants will be unable to address the witness's testimony in their rebuttal damages expert report. Moving the rebuttal report deadline, in turn, requires a slight postponement of the expert discovery deadline and the deadline for dispositive and *Daubert* motions.

Next, the named inventor of the asserted patents, Gordon Bremer, became ill and his deposition has been postponed for similar reasons. The deposition has been re-scheduled for

October 16, and Defendants will similarly need additional time to address Mr. Bremer's testimony in their expert reports.

Plaintiff further states that the requests in this Motion are made for the purpose of ensuring accuracy, reliability, and completeness of the Parties' Disclosures for Expert Witnesses and Rebuttal Expert Witnesses, for the following reasons:

- From November 2013 through the present, Parties have been diligently working with third-party chipmakers, including Broadcom, Qualcomm, Intel, CSR, Marvell, Texas Instruments, and STMicroelectronics, to procure technical and damages information relating to the Bluetooth chips incorporated into Samsung's and BlackBerry's accused products. This information is important to both the disclosure of Plaintiff's technical and damages expert witnesses.
- To accommodate third-party needs and to alleviate discovery burden, Plaintiff has engaged in numerous iterative negotiations with the third-party chipmakers on the scope of documents and information to be provided.
- A number of third-party chipmakers have not produced all the documents until very late in the discovery period, many of which contain information that is important to the expert disclosures.
- Both Parties and third-party chipmakers have produced large volumes of documents and have taken numerous fact witness depositions in the last several weeks, many of which may foreseeably impact the expert disclosures.
- Moreover, a number of third-party discovery items still remain outstanding. Per the Court's Order granting Motion to Amend/Correct Fact Discovery Deadline (Docket No. 140), the

fact discovery deadline with regard to certain third parties has been extended until October 23, 2014 to facilitate various outstanding fact discovery matters.

- Because the recently-produced data and the data this is still anticipated to be produced in this case may have an impact on the accuracy, reliability, and completeness of the disclosures of the expert witnesses, a short extension to the deadlines indicated above is merited.

“A party seeking leave to amend a court’s scheduling order must show ‘good cause.’” *Softvault Systems, Inc. v. Microsoft Corp.*, No. 2:06-CV-16 LED, 2007 WL 1342554 at *1 (E.D. Tex. May 2, 2007) (citing Fed. R. Civ. P. 16(b)). “The good case standard requires the party seeking relief to show that the deadlines cannot be reasonably met despite the diligence of the party seeking the extension.” *Id.* “Trial courts have broad discretion to allow scheduling order modifications and should consider four elements when determining whether to allow a modification: (1) the explanation for the failure to meet the deadline; (2) the importance of the thing that would be excluded; (3) potential prejudice in allowing the thing that would be excluded; and (4) the availability of a continuance to cure such prejudice.” *Id.*

Here, good cause exists for allowing the amendment of the scheduling deadlines. For the reasons shown above, the Parties have acted diligently, the delay is due to circumstances beyond their control, and expert reports are of great importance to each Party. This is a joint motion, and no Party or third party will be prejudiced by the amendment. The Court has broad discretion to grant this Motion, as it will not affect any other deadlines in the Docket Control Order.

A proposed order that complies with this Court’s requirements is attached.

Dated: September 29, 2014

Respectfully submitted,

/s/ Kyril Talanov

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of September, 2014, a true and correct copy of the foregoing document was served on all parties via CM/ECF.

/s/ Kyril V. Talanov

Kyril V. Talanov

CERTIFICATE OF CONFERENCE

I hereby certify that on the 27th, 28th, and 29th days of September, 2014, I conferred with counsel for BlackBerry and Samsung regarding this Motion in accordance with Local Rule CV-7(h). This is a joint motion; it is unopposed.

/s/ Kyril V. Talanov

Kyril V. Talanov